GATT AS AN INTERNATIONAL TRADE ORGANIZATION

An address by Mr. Eric Wyndham White, Executive Secretary of the General Agreement on Tariffs and Trade, delivered at the Polish Institute of International Affairs, Warsaw, on 6 June 1961

The General Agreement, as its name clearly indicates, is, juridically speaking, a trade agreement and nothing more. But because it is a multilateral agreement and contains provisions for joint action by the contracting parties, and for binding decisions to be made by majority voting by the contracting parties acting jointly, it had the potentiality to become, and has in fact become, an international organization for trade co-operation between the signatory States. I have on previous occasions - and particularly in an address delivered at the London School of Economics and Political Science in May 1958 - traced this evolution. Nevertheless, I would like to take this occasion to run over this ground again and bring the story up-to-date.

At the beginning of the story is the Tariff Conference of 1947. The United Nations had in 1946, by constituting a Preparatory Committee, set on foot the preparation of an international trade charter to be administered by a Specialized Agency of the United Nations. In London in 1946 the Preparatory Committee made a good start by agreeing on the outlines of the Charter which it was hoped would be polished and finalized in the spring of 1947 and submitted for adoption by a World Trade Conference later in the year. Some of the key countries were anxious, however, that the months required for drafting and negotiating the text of the Charter should not hold up practical action on the reduction of trade barriers in the immediate post-war period which could be expected to be a particularly favourable time for such action. This was the basis for the suggestion made at the first meeting of the Preparatory Committee in London to initiate a vast multilateral tariff negotiation in the spring of 1947, simultaneously with carrying forward the task of drafting a comprehensive trade Charter. The result of
the negotiations were gathered together in the General Agreement on Tariffs and Trade, accompanied by a set of trade rules designed to prevent the tariff concessions from being frustrated by other protective devices such as import quotas, excessive subsidization, dumping, administrative barriers to trade, and so on. Care was taken to model these rules on the commercial policy provisions of the trade Charter, so that when the latter was brought into effect GATT could be easily merged into the trade organization which would administer the Charter. There was also a minimum of provisions for the administration of the Agreement limited in effect to an Article providing for the contracting parties to the General Agreement to meet from time to time to perform such functions as required joint action. Here again there was a conscious desire to avoid endowing the General Agreement with a separate administrative mechanism so as to leave no doubt that its administration would in due course fall within the competence of the international trade organization.

The General Agreement is, therefore, essentially a multilateral trade agreement embodying reciprocal rights and obligations, and the only administrative provisions are those providing for joint action necessary for the application of the Agreement, such as, for example, consultations on specific matters provided for in the Agreement, settlement of differences, granting of waivers in exceptional circumstances, etc. This provision, however, ends with the fertile words, "and generally with a view to facilitating the operation and furthering the objectives of this Agreement". These objectives are very broad since the Preamble provides:

"1. The contracting parties recognize that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods, and promoting the progressive development of the economies of all the contracting parties."
This phrase is therefore the essential basis for the very broad role which the GATT has come to play as the most important world-wide forum for discussion of trade problems and the mechanism for international co-operation in this important field. The role of the GATT has been built up empirically over the years as the need for an effective international instrument for trade co-operation has made itself increasingly felt.

Although the General Agreement is a complicated text and is therefore universally regarded as a somewhat impenetrable mystery intelligible only to an élite of specialists and technicians, its broad lines are simple enough. It contains in essence three fundamental principles. First that trade should be conducted on the basis of non-discrimination. Accordingly all the contracting parties are bound by the most-favoured-nation clause in the application of import and export duties and charges and in their administration. In addition, insofar as the use of import quotas is permitted under the rules, these are to be administered on a non-discriminatory basis. Any departure from these fundamental rules of non-discrimination are hedged around with conditions and safeguards. Thus, countries may protect themselves against unfair competition through dumping and export subsidization by measures limited to imports from the countries where such dumping or subsidization occurs. But the conditions in which such counter-measures can be taken are strictly limited and defined, so as to prevent abuse. When countries are compelled to restrict the volume of imports in order to safeguard reserves of foreign exchange the strict application of the rule of non-discrimination might lead to a greater degree of discrimination than the financial situation in fact requires. Here again - but within narrow limitations, and subject to international consultation - the rule of non-discrimination is relaxed. However, the most-favoured-nation clause is also qualified so as to permit contracting parties to enter into genuine customs and free-trade areas, the purpose of which is: "to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories", and a series of criteria is laid down designed to ensure that the arrangements shall be "trade creating and not trade diverting".
The second major principle is that protection shall be afforded to domestic industries exclusively through the customs tariff and not through other commercial measures. Thus the use of import quotas as a means of protection is explicitly condemned. The use of import quotas for other purposes - notably to safeguard the balance of payments - is governed by a formidable series of criteria and conditions coupled with procedures for consultations. There are also numerous provisions designed to prevent the use of administrative techniques as a means of protection additional to the tariff. There are also provisions designed to prevent the use of subsidies as a means of obtaining unfair advantages in export markets or to hamper imports.

Finally, running throughout the General Agreement, is the concept of consultation aimed at avoiding damage to the trading interests of all contracting parties.

This in broad outline is the content of the General Agreement. The sum total of the detailed rules which are built around this basic framework constitute a code of rules voluntarily accepted by the GATT contracting parties to govern their trading relationships. The importance of this code can be measured by the fact that it is accepted and applied by forty-two countries whose foreign trade is some eighty-five per cent of the total volume of world trade; countries drawn from all parts of the world and whose interests are as diverse as their geographical location, but which are united in the conviction of the beneficial effects of expanding world trade on an orderly basis.

Now, to revert for a moment to the nature of the General Agreement. It is a multilateral trade agreement and therefore contractual in nature. It is not merely a set of principles or standards. The parties to the General Agreement have contractual rights and contractual obligations aimed at a balance of mutual advantage. It is these rights and obligations that determine the terms of access of contracting parties to each other's markets.

Important consequences follow from the contractual nature of the General Agreement. In the first place the procedures for enforcement of the terms of the Agreement are set in motion only where initiative is taken by an affected negotiating party. The "organization" does not have an independent
or autonomous role in enforcement of the rules. This has both advantages and disadvantages. On the positive side it leaves it to the good judgement of each contracting party whether in any particular case there is any advantage in invoking the GATT machinery. The automatic intervention of the "organization" would not always, or in all circumstances, be fruitful or helpful and there are obvious advantages in leaving this judgement in the first instance to the parties most closely concerned. It also means that there is a maximum encouragement to contracting parties to settle differences by consultation and agreement with the possibility of recourse to the "organization" in the background as a powerful catalyst to agreement. In practice this situation has in fact led to a large number of settlements "out of court" - in fact these are far more numerous than those which have required the intervention of the CONTRACTING PARTIES. On the negative side it must be recognized that most countries are very reluctant to take the initiative of invoking international complaints procedures and that this reluctance is particularly marked in the case of small countries which have differences with very powerful countries. In practice, however, things have worked out reasonably well in the GATT and a nice balance has been struck between too frequent and vexatious use of the complaints procedure on the one hand, and on the other an overly circumspect approach to bringing differences into court. The record of the GATT as an instrument for settlement of trade disputes is a good one and its constructive character is well reflected in the adaptation of terminology used in the GATT. For many years reference was made to the "complaints" procedures, this has now yielded in the light of experience to the more attractive expression, the "conciliation" procedures.

A second consequence of the contractual nature of the Agreement is the relative weakness of the sanctions which may be applied in the event of non-compliance with the rules. In the last resort where consultation has failed and when the conciliatory intervention of the CONTRACTING PARTIES has also failed the ultimate remedy which the CONTRACTING PARTIES can offer to the injured party is a release from obligations to the offender, opening the way to retaliation. This is poor comfort to the injured party for whom the only satisfactory solution is the fulfilment of contractual obligations, and
in only one case have the CONTRACTING PARTIES proceeded to this last step. The emphasis in all the work of the GATT is directed to conciliatory and positive settlements to trade disputes.

A third consequence is that new members can only be admitted on terms to be agreed upon by two-thirds of the existing contracting parties. In most international organizations accession of non-members is semi-quasi-automatic: when an applicant declares his readiness to accept the basic objectives and principles of the organization and to pay the annual dues. But since accession to GATT entitles the newcomer to all the contractual advantage which the Agreement secures to the contracting parties, the latter require that acceding governments negotiate for accession so that there is a balance of rights and obligations between themselves and the newcomer. This in practice has normally meant that an acceding government has to enter into tariff negotiations in order to pay for the tariff benefits which it receives automatically upon accession from the existing contracting parties. But if there are reasons to doubt whether an acceding government, because of its trading system or fixed policies, is likely to be able to fulfil the many obligations contained in the many provisions of the General Agreement, there is also the possibility of the contracting parties agreeing upon special "terms of accession" to ensure the balance of rights and obligations. Indeed this may go further. When Yugoslavia applied to accede to the General Agreement the Yugoslav Government itself admitted that the structure of its trading system was not such that at that time it could give full effect to all provisions of the General Agreement. It did not, therefore, press for immediate accession but concluded an arrangement of association under which Yugoslavia applies the General Agreement in relation to contracting parties as fully as her existing system permits, and in return the contracting parties apply the General Agreement to Yugoslavia to an extent commensurate with Yugoslavia's ability to do so. Yugoslavia meanwhile is adapting her economy in such a way as to permit eventual full accession and there are annual consultations between the CONTRACTING PARTIES and Yugoslavia on the progress of this transition from association to accession. A somewhat different situation arose when Poland submitted a request for accession. It was the feeling of the Polish Government that it was in a position to accept and implement all of the obligations of a contracting party. This view, however, was not shared
by the generality of the contracting parties, who felt that the trading system of Poland was such that in practice Poland could not guarantee the terms of access to the Polish market comparable to that which she would automatically obtain through accession. These difficulties are still unresolved; meanwhile Poland has also entered into a contract of association aimed at expanding its trade with contracting parties to the General Agreement on a basis of mutual advantage and reciprocity. Poland also participates fully in the work of the CONTRACTING PARTIES. The Polish Government has made it clear that it considers that this is only a transitional arrangement which it desires to see transformed as soon as possible into full membership of GATT. The association arrangement provides for annual consultations between the CONTRACTING PARTIES and Poland in the course of which, no doubt, more will be heard of this difference of opinion.

Having thus described the nature and content of the General Agreement I will now turn to what has been achieved under its framework and the scope of the activities on which the CONTRACTING PARTIES are engaged.

As its title implies the General Agreement was in the first instance a multilateral agreement for the reduction and stabilization of tariffs. As we have seen it originated in the 1947 tariff negotiations which were unique both in their character and scope. Some twenty countries in all parts of the world and representing an overwhelming percentage of world trade engaged in negotiations for the reciprocal reduction and binding of tariffs over a vast sector of their trade. The far-reaching results achieved owed much to the unprecedented technique of multilateral negotiation on so broad a scale. The negotiations were in fact noteworthy in many respects. First they were a striking affirmation of the liberal direction of United States commercial policy and translated this in terms of a sweeping reduction of the United States tariff on a very wide front. Secondly the negotiations resulted in creating a favourable basis for the resumption of international trade in conditions of unprecedented tariff stability. Thirdly the Agreement contained a new feature of great significance. The creditor countries, i.e. those with a favourable balance of payments, accepted a commitment to maintain open access to their markets subject only to the tariff barriers (which was to a large extent bound against increase) whilst accepting restrictions - and even discriminatory restrictions - in the markets of the deficit countries. This far-sighted policy in the event proved to have a very favourable bearing on the recovery
of international trade and the restoration of financial equilibrium. As economic reconstruction proceeded and the export capacity of the deficit countries was restored, the latter benefited from liberal access to markets, particularly in the dollar area, until in recent years what had appeared an intractable structural imbalance in international payments was largely corrected and it was possible to return to the system of convertible currencies throughout a large part of the GATT trading community. This in turn has cleared the way for the elimination of discriminatory restrictions on trade which has today been largely achieved, at least in the import trade of the industrialized countries. Another noteworthy feature of the tariff agreement was the elaborate set of provisions designed to prevent the nullification of the tariff concessions by other measures of commercial policy, and procedures for consultation and settlement of differences. As we shall see later, these provisions for the protection and enforcement of the tariff concessions were also subsequently to form the basis for a significant broadening of the activities of the GATT. The initial negotiations of 1947 were followed by others, in 1949 at Annecy, 1951 at Torquay, and in 1956 at Geneva. In the course of negotiations many additional countries acceded to the General Agreement, and the coverage of the tariff concessions was considerably broadened. Today in Geneva further negotiations are proceeding which have a special significance.

One of the basic provisions for protecting the tariff concessions to which I have referred and which has become one of the key provisions of the code of trade rules administered by the GATT, is the ban on the use, except in defined circumstances, of quantitative restrictions on imports. For many years, except in the creditor countries such as the United States and Canada, this rule was a dead letter because most GATT countries were compelled to maintain quantitative restrictions on their imports owing to an insufficiency of foreign exchange to cover the full demand for imported products. Because the shortage of currencies was unevenly distributed the GATT also allowed a more severe limitation of imports from some sources than from others, in accordance with the relative stringency of the importing country's availabilities of different currencies. But the important point is that the use of quantitative restrictions and their discriminatory application took place

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1 For further comment see Some Structural Problems of International Trade, address by the Executive Secretary of GATT, delivered before the Polish Economic Society, Warsaw, 12 June 1961.
under defined limits and subject to consultation procedures which provided at once a guarantee against abuse and an opportunity to avoid unnecessary damage to the trade of other countries. Moreover the existence of the ban and the constant pressure of the GATT for the progressive elimination of restrictions and of discrimination had some influence in preventing these restrictions from becoming deeply imbedded as an instrument of protectionism. The action of the GATT was necessarily for long years unobtrusive and unspectacular in this field, but when the economic recovery of Europe was an accomplished fact swift progress was made in the progressive elimination of import restrictions in countries which had maintained them so long for balance-of-payments reasons. This has given a vigorous impulse to the expansion of international trade to current record levels.

I have laid special emphasis on consultations and negotiations relating to tariffs and to import restrictions, but such consultations and negotiations have also extended to a wide range of other commercial policy measures including, inter alia, anti-dumping measures, valuation, consular fees and formalities and so on.

This decade of practical experience has established the GATT trade rules as the effective basis of commercial relations among the world-wide membership of GATT. As such they provide an objective basis for settlement of differences between individual contracting parties and in the background is the procedure of complaint to the organization on the ground of nullification and impairment, a procedure which as I have already pointed out, has significantly taken on the description of "conciliation" in place of the harsher one of "complaint" which was originally employed.

Taken together the multifarious activities which I have described constitute no small achievement for this Cinderella among the great international organizations. However, the story is not yet complete. The periodical meetings of the CONTRACTING PARTIES have laid the foundations for an even more important role for the GATT as the basis for international trade co-operation in the broadest sense. Recent developments, which include the evolving of regional integration arrangements, the external impact of national agricultural policies and the growing awareness of the importance of external trade as an important feature in the development of the economies of the less-developed countries,
have set new problems whose solution urgently calls for a high degree of international co-operation. These major structural problems impinge on the various activities of the GATT in the trade field, and the major test of the "organization" in future years will be whether the habits and methods of consultation and negotiation which have been developed in the GATT will prove strong enough to meet these challenges. If the GATT does not rise to the occasion, it is certain that its influence and effectiveness will decline. If it does, then it is capable of continuing to play a vital part in international economic affairs.

The organization has at last girded itself for action. The Agreement has been subjected to a thorough overhaul in 1954/55, its basic objectives have been reaffirmed, some of the basic provisions have been revised, notably those relating to the less-developed countries, and the administration of the Agreement has been put on a firm footing. A permanent Council of Representatives which can meet at ten days notice has been established, the number of plenary sessions has been increased from one to two each year, and the secretariat has been appreciably strengthened. A dynamic and ambitious programme for trade expansion based on a prior analysis of current trade problems by eminent economists, has been put in hand. As part of this programme a vast tariff negotiation which promises a significant reduction in the existing level of industrial tariffs is under way; an analysis in depth of the impact of domestic agricultural policies through direct consultations with all the Member Countries is almost complete, and a unique probe into the export problems of the less-developed countries has also reached an advanced stage of progress. All this analysis and study is intended to be the basis of action and it is encouraging evidence of this that the CONTRACTING PARTIES have recently agreed to summon a meeting of trade Ministers of all Member Countries in the autumn of this year in order to seek directives and guidance for moving ahead from consultation and study to action. Of the substance and nature of some of the structural problems thrown up in the course of elaborating this programme for trade expansion I have spoken on another occasion. That there are storms and breakers ahead, I have no doubt, but the GATT is, I believe, a stout ship which has weathered some difficult seas before and is manned by a crew which has had perforce to learn the hard way a little of the skill of international navigation.

\[1\text{See Some Structural Problems of International Trade}\]